

REMARKS

By the foregoing Amendment, the Related Applications section of the specification has been updated, and Claim 24 has been amended. Claims 24-30 remain pending. Favorable reconsideration of the application is respectfully requested.

The Examiner indicated that the Information Disclosure Statement filed March 16, 2004, failed to comply with 37 CFR §1.97, §1.98 and MPEP §609, because "the application number listed was incorrect." It is acknowledged that 37 CFR §1.98 paragraph (a) was revised September 21, 2004, effective October 21, 2004, to include the requirement that each page of the list must include the number of the application in which the information disclosure statement is being submitted; however, this requirement was not in effect when the Information Disclosure Statement was filed with the application on March 16, 2004, so that this requirement should not apply to the Information Disclosure Statement filed March 16, 2004. Applicant wishes to thank the Examiner for the indication that the information listed in the Information Disclosure Statement was nevertheless considered.

Claims 24-30 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Diaz et al. '394 in view of Ahmed. The Examiner concluded that the Diaz non-provisional application published application US 2004/0087964 (now Patent No. 7,018,394) based on the Diaz provisional application 60/260,742 did not introduce any new matter, so that Diaz et al. '394 was entitled to the priority date of January 10, 2001. It is respectfully submitted that the conclusion that the Diaz provisional

application 60/260,742 did not introduce any new matter is not justified, and has not been substantiated by the Examiner. Clearly the text and drawings of the two documents contain a great many differences. It is respectfully submitted that Diaz et al. '394 should not be given effect as prior art from the priority date of January 10, 2001, as to the recitation in Claim 24 of "a longitudinal slot formed in the upper wall of the elongated tubular member and extending a majority of the length of elongated tubular member, leaving up to about 10 cm with no slot." It is respectfully submitted that provisional application 60/260,742 does not teach, disclose or suggest this limitation, so that Diaz '394 also should not be given effect as prior art teaching this limitation.

At page 2, second line from the bottom, to page 3, line 1, Diaz et al. provisional application 60/260,742 only discloses "Also shown in FIG. 2a, the proximal portion 24 contains a longitudinal slit. This slit extends from the proximal end proximal portion 24 to stopper 20." It is therefore respectfully submitted that Diaz et al. '394 is not entitled to a prior art date as to the feature of "a longitudinal slot formed in the upper wall of the elongated tubular member and extending a majority of the length of elongated tubular member, leaving up to about 10 cm with no slot," as is recited in Claim 24.

The Examiner further acknowledged that Diaz et al. '394 does not teach a v-shaped configured guide. Ahmed was cited as disclosing angled winged flanges, but the Examiner did not assert that Ahmed teaches a slot that "has a V-shaped configuration," as is recited in Claim 24.

Claim 24 has been amended to recite "the sheath being attached to a segment of the flexible pusher member." Support for this amendment can be found in the

specification at page 7, lines 6-8. It is respectfully submitted that Diaz et al. '394 and Ahmed fail to teach, disclose or suggest a sheath attached to a segment of a flexible pusher member, as is claimed, and that Claims 24-30 are novel and inventive over Diaz et al. '394 and Ahmed, taken either individually or in combination. It is therefore respectfully submitted that the rejection of Claims 24-30 on the grounds of obviousness from Diaz et al. in view of Ahmed should be withdrawn.

In light of the foregoing amendments and remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

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